

SUBCHAPTER D : WORDING OF THE MECHANISMS FOR CLOSURE

§37.301. Trust Agreement for Closure.

(a) A trust agreement for a closure trust fund, as specified in §37.201 of this title (relating to Trust Fund for Closure), must be worded as specified in Figure 1: Trust Agreement, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure 1: 30 TAC §37.301(a)

Figure 1: 30 TAC §37.301(a)

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Texas Natural Resource Conservation Commission, "TNRCC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility(ies) shall provide assurance that funds will be available when needed for closure of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "facility" or any other facility or activity that is subject to regulation under 30 TAC Chapter 37.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the TNRCC registration or permit number, name, address, and the current closure cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TNRCC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TNRCC.

Section 4. Payment for Closure. The Trustee shall make payments from the Fund as the TNRCC executive director shall direct, in writing, to provide for the payment of the costs of closure of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the TNRCC executive director from the Fund for closure expenditures in such amounts as the TNRCC executive director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the TNRCC executive director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use, in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered or permitted under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities

may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the TNRCC executive director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the TNRCC executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the TNRCC executive director, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the TNRCC executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of

the Grantor or TNRCC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TNRCC, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the TNRCC executive director, by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the TNRCC executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §37.301(a) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By (Title)
Attest:

(Title)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal)

(b) Figure 2: Certification of Acknowledgment is the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §37.201 of this title. Figure 2: 30 TAC §37.301(b)

Figure 2: 30 TAC §37.301(b)

CERTIFICATION OF ACKNOWLEDGMENT

State of _____
County of _____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
(signature of Notary Public)

Adopted December 4, 1996

Effective December 30, 1996

§37.311. Payment Bond.

A surety bond guaranteeing payment for closure, as specified in §37.211 of this title (relating to Surety Bond Guaranteeing Payment for Closure), must be worded as in the Payment Bond for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.311

Figure: 30 TAC §37.311

PAYMENT BOND FOR CLOSURE

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission (hereinafter called TNRCC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the appropriate program, to comply with registration or permit requirements in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure as a condition of the registration or permit, and

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund into the standby trust fund as directed by the TNRCC executive director the amount(s) identified above for the facility,

Or if the Principal shall fund into the standby trust fund as directed by the TNRCC executive director in such amount(s) within 15 days after a final order to begin closure is issued by the TNRCC executive director or a U.S. district court or other court of competent jurisdiction,

Or if the Principal shall provide alternate financial assurance and obtain the TNRCC executive director's written approval of such assurance, within 30 days after the date notice of cancellation is received by both the Principal and the TNRCC executive director from the Surety(ies), then the obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the TNRCC executive director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the TNRCC executive director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the TNRCC executive director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the TNRCC executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the TNRCC executive director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the TNRCC executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Payment Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute the surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.311 as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

(Corporate seal) _____

Corporate Surety(ies)

(Name and address and
State of Incorporation:) _____
Liability limit:\$ _____
(Signature(s)) _____
(Name(s) and title(s) _____
(Corporate Seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for
Surety above.)

Bond premium: \$ _____

Date bond executed: _____.

Effective Date: _____.

Principal: (legal name and business address of owner and operator).

Type of Organization: (insert "individual," "joint venture," "partnership," or "corporation,")

State of Incorporation: _____.

Surety(ies): (name(s) and business address(es))

TNRCC registration or permit number, name, address, and closure amount(s) for each facility guaranteed by
this bond (indicate closure amounts for each facility):

Total penal sum of bond: \$_____.

Surety's bond number: _____.

Adopted December 4, 1996

Effective December 30,1996

§37.321. Performance Bond.

A surety bond guaranteeing performance for closure, as specified in §37.221 of this title (relating to
Surety Bond Guaranteeing Performance for Closure), must be worded as in the Performance Bond for
Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the
parenthesis deleted. Figure: 30 TAC §37.321

Figure: 30 TAC §37.321

PERFORMANCE BOND FOR CLOSURE

Date bond executed: _____.

Effective date: _____.

Principal: (legal name and business address of owner or operator).

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation').

State of incorporation: _____.

Surety(ies): (name(s) and business address(es))

TNRCC registration or permit number, name, address, and closure amounts(s) for each facility guaranteed by this bond (indicate closure amounts for each facility):

Total penal sum of bond: \$_____.

Surety's bond number: _____.

Know All Persons By These Presents. That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission (hereinafter called TNRCC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the appropriate program, to comply with registration or permit requirements in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure as a condition of the registration or permit to operate under authorization, and

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure requirements of the registration or permit for operating under authorization as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance and obtain the TNRCC executive director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the TNRCC executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an TNRCC executive director that the Principal has been found in violation of the closure requirements for a facility which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure requirements for operating under authorization or place the amount guaranteed for the facility in the standby trust fund as directed by the TNRCC executive director.

Upon notification by an TNRCC executive director that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the TNRCC executive director during the 90 days following receipt by both the Principal and the TNRCC executive director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into an account as directed by the TNRCC executive director.

The surety(ies) hereby waive(s) notification of amendments to closure requirements, registration or permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the TNRCC executive director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the TNRCC executive director, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the TNRCC executive director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the TNRCC executive director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.321 as such regulation was constituted on the date this bond was executed.

Principal.
(Signature(s))
(Name(s))
(Title(s))
(Corporate seal)
(Corporate Surety(ies))
(Name and address)
State of incorporation:

Liability limit: \$ _____.
(Signature(s))
(name(s) and title(s))
Corporate seal:
(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: \$ _____.

Adopted December 4, 1996

December 30, 1996

§37.331. Irrevocable Standby Letter of Credit.

An irrevocable standby letter of credit for closure, as specified in §37.231 of this title (relating to Irrevocable Standby Letter of Credit for Closure), must be worded as in the Irrevocable Standby Letter of Credit for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.331

Figure: 30 TAC §37.331

IRREVOCABLE STANDBY LETTER OF CREDIT FOR CLOSURE

Executive Director
Texas Natural Resource Conservation Commission

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars \$_____, available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. _____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the 30 Texas Administrative Code Chapter 37."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

We certify that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §37.331 as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution)
(Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

Adopted December 4, 1996

December 30, 1996

§37.341. Certificate of Insurance.

A certificate of insurance for closure, as specified in §37.241 of this title (relating to Insurance for Closure), must be worded as in the Certificate of Insurance for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.341

Figure: 30 TAC §37.341

CERTIFICATE OF INSURANCE FOR CLOSURE

Name and Address of Insurer (herein called the "insurer"):

Name and Address of Insured (herein called the "insured"):

Facilities covered: (list for each facility: The TNRCC registration or permit number, name, address, and the amount of insurance for closure (these amounts for all facilities covered must total the face amount shown below).)

Face Amount: _____

Policy Number: _____

Effective Date: _____

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 TAC Chapter §37.241 of this title (relating to Insurance for Closure), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Natural Resource Conservation Commission ("TNRCC"), the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 Texas Administrative Code §37.341 as such regulations were constituted on the date shown immediately below.

(Authorized signature of Insurer)

(Name of person signing)

(Title of person signing)

(Signature of witness or notary:)

(Date)

Adopted December 4, 1996

Effective December 30, 1996

§37.351. Financial Test.

A letter from the chief financial officer for closure, as specified in §37.251 of this title (relating to Financial Test for Closure) must be worded as in the Financial Test for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.351

Figure: 30 TAC §37.351

FINANCIAL TEST FOR CLOSURE

LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TNRCC executive director)

I am the Chief Financial Officer of (name and address of firm.) This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure as specified in 30 Texas Administrative Code (TAC) Chapter 37.

(Fill out the following paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TNRCC registration or permit number, name, address, and closure cost estimate.)

1. This firm is the owner or operator of the following facilities for which financial assurance for closure is being demonstrated through the financial test specified in 30 TAC §37.251 of this title (relating to Financial Test for Closure). The closure cost estimate covered by the test is shown for each facility:
_____.
2. This firm guarantees, through the corporate guarantee specified in 30 TAC §37.261 of this title (relating to Corporate Guarantee for Closure), the closure cost of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure so guaranteed are shown for each facility: _____. The firm identified above is the direct or higher-tier parent corporation of the owner or operator.
3. In States where TNRCC is not administering the financial requirements of 30 TAC Chapter 37, this firm, as owner, operator, or guarantor, is demonstrating financial assurance for the closure of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in 30 TAC §37.251 of this title (relating to Financial Test for Closure). The current closure cost estimates covered by such a test are shown for each facility:_____.
4. The firm identified above owns or operates the following facilities for which financial assurance for closure or, if a disposal facility, post-closure cost, is not demonstrated either to TNRCC, a federal agency or a State through the financial test or any other financial assurance mechanisms specified in 30 TAC Chapter 37 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:_____.
5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144 and 30 TAC 331 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 and 30 TAC 331.142 are shown for each facility:_____.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed (12 months) fiscal year, ended (date).

(Fill in Alternative I if the criteria of 30 TAC §37.251(b)(1) are used. Fill in Alternative II if the criteria of 30 TAC §37.251(b)(2) are used.)

ALTERNATIVE I

1. (a) Current closure cost for subjected facility(ies) \$ _____
- (b) Sum of corrective action, closure and post-closure costs, liability coverage, and plugging and abandonment costs covered by a financial test and/or guarantee \$ _____
- (c) Total of lines (a) and (b) \$ _____
- *2. Total liabilities (if any portion of the closure cost or liability coverage is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to ~~lines 3 and 4~~) \$ _____
- *3. Tangible net worth \$ _____
- *4. Net Worth \$ _____
- *5. Current assets \$ _____
- *6. Current liabilities \$ _____
- *7. Net working capital (line 5 minus line 6) \$ _____
- *8. The sum of net income plus depreciation, depletion and amortization \$ _____
- *9. Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.) \$ _____

Circle either "yes" or "no" to the following questions.

10. Is line 3 at least \$10 million? yes/no
11. Is line 3 at least 6 times line 1(c)? yes/no
12. Is line 7 at least 6 times line 1(c)? yes/no
- *13. Are at least 90% of firm's assets located in the U.S.? yes/no
If not, complete line 14
14. Is line 9 at least 6 times line 1(c)? yes/no
15. Is line 2 divided by line 4 less than 2.0? yes/no
16. Is line 8 divided by line 2 greater than 0.1? yes/no
17. Is line 5 divided by line 6 greater than 1.5? yes/no

ALTERNATIVE II

1. (a) Current closure cost for subjected facility(ies) \$ _____
- (b) Sum of corrective action, closure and post-closure costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$ _____
- (c) Total of lines (a) and (b) \$ _____
2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____
4. Date of maturity of bond _____
- *5. Tangible net worth (if any portion of the closure cost estimate(s) or liability coverage requirements is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) \$ _____
- *6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) \$ _____

Circle either "yes" or "no" to the following questions.

- | | | |
|-----|------------------------------------------------------------|--------|
| 7. | Is line 5 at least \$10 million? | yes/no |
| 8. | Is line 5 at least 6 times line 1(c)? | yes/no |
| *9. | Are at least 90% of the firm's assets located in the U.S.? | yes/no |
| | If not, complete line 10 | |
| 10. | Is line 6 at least 6 times line 1(c)? | yes/no |

I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §37.351 as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

Adopted December 4, 1996

Effective December 30, 1996

§37.361. Corporate Guarantee for Closure.

A corporate guarantee for closure as specified in §37.261 of this title (relating to Corporate Guarantee for Closure) must be worded as in the Corporate Guarantee for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis material deleted. Figure: 30 TAC §37.361

Figure: 30 TAC §37.361

CORPORATE GUARANTEE FOR CLOSURE

Guarantee made this ____ day of _____, 19____, by (name of guaranteeing entity), a business corporation organized under the laws of the State of _____, herein referred to as guarantor to the Texas Natural Resource Conservation Commission (TNRCC), obligee, on behalf of (owner or operator) of (business address).

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code (TAC) §37.251 of this title (relating to Financial Test for Closure) and §37.261 of this title (relating to Corporate Guarantee for Closure).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: TNRCC registration or permit number, name, and address.)
3. "Closure requirements" as used below refers to the closure cost estimate maintained as required for the closure of facilities as identified above.
4. For value received from (owner or operator), guarantor guarantees to TNRCC that in the event that (owner or operator) fails to perform closure of the above facility(ies) in accordance with the closure requirements when required to do so, the guarantor will do so as specified in 30 Texas

- Administrative Code §37.251 of this title (relating to Financial Test for Closure) in the name of (owner or operator) in the amount of the adjusted closure cost estimates prepared.
5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 30 days, by certified mail, notice to the TNRCC executive director and to (owner or operator) that he intends to provide alternate financial assurance by selecting one of the mechanisms as specified in Subchapter C of 30 TAC Chapter 37. Within 30 days after sending such notice, the guarantor will establish such financial assurance if (owner or operator) has not done so.
 6. The guarantor agrees to notify the TNRCC executive director, by certified mail, of a voluntary or involuntary case under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement.
 7. Guarantor agrees that within 30 days after being notified by the TNRCC executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, he will establish alternate financial assurance by selecting one of the mechanisms as specified in Subchapter C of 30 TAC Chapter 37, in the name of (owner or operator) if (owner or operator) has not done so.
 8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure cost estimates, the extension or reduction of the time of performance of closure or any other modification or alteration of an obligation of the owner or operator.
 9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable financial assurance requirements for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the TNRCC executive director and to (owner or operator), such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TNRCC and (owner or operator) as evidenced by the return receipts.
 10. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance and obtain written approval of such assurance from the TNRCC executive director within 90 days after a notice of cancellation by the guarantor is received by both the TNRCC executive director and (owner or operator), guarantor will provide alternate financial assurance by selecting one of the mechanisms as specified in Subchapter C of 30 TAC Chapter 37, in the name of the (owner or operator).
 11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Natural Resource Conservation Commission or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure cost estimates.

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.361.

Effective date:_____.

(Name of guarantor)

(Authorized signature for guarantor)

(Type name of person signing)

(Title of person signing)

Signature of witness or notary:_____

Adopted December 4, 1996

December 30, 1996